IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5584 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAN BHADA AS HEIRS OF BAI MOTI BHADA & 9 - Petitioner(s)

Versus

RAJBAIBEN LAXMANBHAI & 39 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner(s) : 1 - 4, 4.2.1, 4.2.2,4.2.3 - 10, 10.2.1, 10.2.2,10.2.3
RULE SERVED for Respondent(s) : 1 - 8,10 - 15, 22,34 - 37, 40,
SERVED BY AFFIX.-(R) for Respondent(s) : 9,19 - 20,23 - 25,38 - 39.
SERVED BY RPAD - (R) for Respondent(s) : 16 - 18,26 - 33.
RULE UNSERVED for Respondent(s) : 21,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal

dated 1.5.1986 in Revision Application TEN BR. No. 375/1997 in partly allowing the said revision application and remanding the matter to the Mamlatdar and ALT, Babra for deciding the position of Bid and Kharaba land being utilized by the respondent Girasdars and to give a fresh decision.

2. Respondents No. 1 to 7 are the original-Girasdars and there was an estate called “Ram Bhim” estate. After a long litigation, the Mamlatdar, Babra, by his order dated 23rd December 1976 passed in Case No. 1/1976 allotted the lands to the respondents No. 1 to 7 herein for personal cultivation to the extent of 80 Acres from 3 villages to Vavda, Kalorana and Kotdapitha under the provisions of The Saurashtra Land Reforms Act, 1951. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Babra dated 23rd December 1976 in Case No. 1 of 1976, the petitioners and other persons preferred Appeal before the Assistant Collector, Amreli, and the Assistant Collector by his order dated 26th December 1977 dismissed the said appeal. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Amreli, dated 26th September 1977 the petitioners and other persons preferred a revision application before the Gujarat Revenue Tribunal being Revision Application TEN.B.R. No. 375/1977 which came to be partly allowed by the Gujarat Revenue Tribunal by judgment and order dated 1.5.1986 and the matter came to be remanded to the Mamlatdar, Babra for

deciding the position of the bid lands and Kharabha lands, if any, utilized by the respondents No. 1 to 7 Girasdars and to give a fresh decision in the matter as per law. The said judgment and order, passed by the Gujarat Revenue Tribunal, remanding the matter to the Mamlatdar, Babra, is the subject matter of the present Special Civil Application under Article 227 of the Constitution of India.

3. The only contention, which is canvassed on behalf of the petitioners is that the respondents Girasdars have obtained lands for personal cultivation from their independent estates and therefore they were not entitled to any land for personal cultivation from the joint estate of Ram Bhim. He has also reiterated the contentions raised before the Gujarat Revenue Tribunal with regard to limitation etc.

4. So far as the contention with regard to limitation is concerned, the Gujarat Revenue Tribunal has elaborately dealt with the same in Para 6 of the Judgment. So far as the contention on behalf of the petitioners, that once the Girasdars have obtained the lands for personal cultivation from their independent estates and therefore they are not entitled to any lands for personal cultivation from the joint estate of 'Ram Bhim', is concerned, it is required to be noted, that as held by this Court, Girasdars are entitled to lands for personal

cultivation from the estate separately and the allotment of lands for personal cultivation from the joint estate does not confront the allotment already made to each of the Girasdars in their individual capacity from their independent lands. As held by this Court, in Special Civil Applications No. 305 and 368 of 1962, in case of a joint estate separate allotment of lands for personal cultivation can be made as a distinct estate and that there is a material distinction between the exclusive estate and the joint estate and two estates should not be mixed-up for allotment of lands for personal cultivation. In view of the above, there is no substance in the submission on behalf of the petitioners. Accepting the submission made on behalf of the petitioners with regard to bid lands and kharabha lands, the Gujarat Revenue Tribunal had remanded the matter back to the Mamlatdar, Babra for deciding the position of bid lands and kharabha lands if any utilized by the respondent Girasdars and to give a fresh decision in the matter as per law. As it is a remand matter, the same is not required to be interfered with by this Court in exercise of power under Article 227 of the Constitution of India. Even otherwise, it appears that there is no jurisdictional error much less an error of law committed by the Gujarat Revenue Tribunal which require interference of this Court in exercise of power under Article 227 of the Constitution of India.

5. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief, if

any, stands vacated forthwith.

[M.R. Shah, J.]

RMR.